

## Consumer Product Safety Commission

## § 1009.9

all the criteria to the extent feasible in each case, and as interactively or jointly as possible.

(Sec. 4, 15 U.S.C. 2053, 86 Stat. 1210; as amended by sec. 4, Pub. L. 94-284)

[42 FR 53953, Oct. 4, 1977]

### **§ 1009.9 Policy regarding the granting of emergency exemptions from Commission regulations.**

(a) This document states the Consumer Product Safety Commission's policy with respect to emergency requests for exemptions for companies which inadvertently produce products that do not conform to Commission regulations issued under the five acts the Commission administers. These acts are the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act of 1970 and the Refrigerator Safety Act. While the Commission is reluctant to grant such requests, it believes that the public should be apprised of the manner in which it rules on exemption requests and therefore is publishing the policy to provide guidance to industry and others making such requests. The publication of the policy will also serve to inform the public of the criteria that the Commission uses in ruling upon such requests. This policy is intended to cover emergency requests for exemptions and, while relevant, is not intended to limit the discretion of CPSC staff to close or not to open cases in the routine enforcement of CPSC regulations.

(b) The policy governs requests for exemption from any regulation under any act the Commission administers. The policy lists criteria the Commission considers in deciding whether to grant or deny an exemption request and therefore, should provide guidance to companies on the types of information to be submitted with requests. In addition, published Commission procedures regarding petitioning for amendments to regulations may assist companies in determining what supporting data to submit with a request. (See, for example, existing Commission procedures at 16 CFR 1110, 16 CFR 1607.14, 16 CFR 1500.82 and 16 CFR 1500.201). The exemption requests themselves should

be filed with the Office of the Secretary of the Commission.

(c) It is the general policy of the Commission that when a particular exemption request is made and granted, all similarly situated persons are accorded the same relief as the person who requested the exemption. Therefore, when any amendment to a Commission regulation is proposed or a statement of enforcement policy is issued, the document to the extent practicable will be phrased in objective terms so that all similarly situated persons will be able to determine whether their products would fall within the relief.

(d) In deciding whether to grant or deny an exemption request, the Commission considers the following general criteria:

(1) *The degree to which the exemption if granted would expose consumers to an increased risk of injury:* The Commission does not believe it should exempt products which would present a significantly greater risk to consumers than complying products. Therefore, the Commission will not grant exemption requests in such cases.

(2) *The cost to the Commission of granting emergency requests:* Granting emergency exemption requests will in most cases require drafting a proposed and a final amendment or a statement of enforcement policy for publication in the FEDERAL REGISTER. Such action may also require the Commission to monitor the sale or distribution of the products. These activities consume scarce Commission resources. In some instances, the costs to the Commission may exceed the benefit to be derived by a company and similarly situated companies. If so, the Commission may deny the request on this ground.

(3) *The precedential effect of exempting some products:* The Commission recognizes that decisions to exempt some products set precedents in at least two ways. First, they indicate to companies that the CPSC will permit deviations to a given regulation. Second, they indicate to companies that the CPSC will permit deviations to regulations in general. Both precedents, if set carelessly by the CPSC, could result in many requests for exemption and could

undermine the stability and integrity of the Commission's regulations.

(e) In deciding whether to grant or deny an exemption request, the Commission also considers the following factors which relate specifically to the company making the request: (If the request is granted, all similarly situated companies, however, will be accorded the same relief).

(1) *The nature of the emergency exemption request:* The Commission will not reward bad quality control or faulty design work by permitting companies to market their mistakes. Although it is difficult to detail specific instances, the Commission is sympathetic to companies that produced noncomplying products due to factors beyond their immediate control or despite their best efforts.

(2) *The economic loss which a company will suffer if its emergency request is denied:* The greater the loss a company may suffer the more likely the Commission will favorably consider an exemption. However, the Commission does not believe economic loss alone should be determinative of an emergency exemption request.

(3) *The fairness to competitors:* The Commission is reluctant to grant relief if it could place the company at an unfair competitive advantage over other companies which have successfully complied with the same regulation. Therefore, the Commission will afford the same relief to similarly situated companies, and will decline to grant a request where unfair competitive advantage may result.

(15 U.S.C. 1191, 1261, 1471, 2051, 2111)

[44 FR 40639, July 12, 1979]

## PART 1010 [RESERVED]

## PART 1011—NOTICE OF AGENCY ACTIVITIES

Sec.

1011.1 General policy considerations; scope.

1011.2 Definitions.

1011.3 General requirements for various kinds of meetings.

1011.4 Forms of advance public notice of meetings; Public Calendar/Master Calendar and FEDERAL REGISTER.

AUTHORITY: 5 U.S.C. 552b(g); Pub. L. 92–573, 86 Stat. 1207 (15 U.S.C. 2051–81) as amended by Pub. L. 94–284, 90 Stat. 503, Pub. L. 95–319, 92 Stat. 386, Pub. L. 95–631, 92 Stat. 3742; Pub. L. 90–189, 81 Stat. 568 (15 U.S.C. 1191–1204); Pub. L. 86–613, 74 Stat. 372, as amended by Pub. L. 89–756, 80 Stat. 1303, and Pub. L. 91–113, 83 Stat. 187 (15 U.S.C. 1261–74); Pub. L. 91–601, 84 Stat. 1670 (15 U.S.C. 1471–76) and the Act of Aug. 7, 1956, 70 Stat. 953 (15 U.S.C. 1211–14).

SOURCE: 46 FR 38322, July 24, 1981, unless otherwise noted.

### § 1011.1 General policy considerations; scope.

(a) In order for the Consumer Product Safety Commission to properly carry out its mandate to protect the public from unreasonable risks of injury associated with consumer products, the Commission has determined that it must involve the public in its activities to the fullest possible extent.

(b) To ensure public confidence in the integrity of Commission decision-making, the Agency, to the fullest possible extent, will conduct its business in an open manner free from any actual or apparent impropriety.

(c) This part 1011 presents general provisions concerning public notice for various types of Agency activities.

### § 1011.2 Definitions.

As used in this part 1011, the following terms shall have the meanings set forth:

(a) *Agency.* The entire organization which bears the title Consumer Product Safety Commission (CPSC).

(b) *Agency staff.* Employees of the Agency other than the five Commissioners.

(c) *Commissioner.* An individual who belongs to the collegial body heading the CPSC.

(d) *Commission.* The Commissioners of the Consumer Product Safety Commission acting in an official capacity.

(e) *Commission Meeting.* A meeting of the Commissioners subject to the Government in the Sunshine Act, 5 U.S.C. 552b. This term is more fully defined in the Commission's regulations under the Government in the Sunshine Act, 16 CFR part 1013.

(f) *Agency meeting.* A meeting between Agency personnel, including individual Commissioners, and outside